Appeal from Circuit Court, Culpeper County.

Bill by Anna E. Johnson and others against the Powhatan Mining Company, Incorporated, and others. From a decree dismissing the bill, the plaintiffs appeal. Decree amended, affirmed, and remanded.

St. George R. Fitzhugh and *A. T. Embrey,* both of Fredericksburg, for appellants.

Waite, Perry & Nottingham and *Hiden & Bickers,* all of Culpeper, and *W. W. Butzner,* of Fredericksburg, for appellees.

PARKER *v.* STEPHENSON.

June 10, 1920.

[104 S. E. 39.]

1. **Infants (§ 39*)—In Suit to Sell or Mortgage Lands, No Demurrer Needed to Protect Infant.**—In suit to sell or mortgage lands of an infant, he is considered as objecting on every point, and no demurrer is needed on his part to protect him from defective allegations of the bill; substantial compliance with the statutory procedure being essential to the jurisdiction of the court.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 494.]

2. **Infants (§ 39*)—Bill to Sell or Mortgage Lands Sufficient.**—Bill by his mother to sell or mortgage an infant's lands, not stating that his interest in two houses and lots mentioned was all of his estate, but such being the fair inference, an inference confirmed by the finding of the commissioner to whom the cause was referred, which finding was confirmed without objection, was sufficient.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 489.]

3. **Wills (§ 538*)—Son and Wife Took Fee-Simple Estates in Property Devised.**—Clause of a father's will whereby he declared that, in the event of death of either his son or his wife, his entire estate should go to the survivor, referred to the father's death, on which, both the son and wife surviving, they took fee-simple estates in the property devised to them respectively.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 826.]

4. **Infants (§ 39*)—Paternal Heirs of Child Should Have Been Made Parties to Suit to Sell or Mortgage Lands.**—Under Code 1904, § 2556, where on death of an infant his property would have descended to his paternal heirs, he having received it from his

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

father's estate, such heirs should have been made parties to a suit by his mother to sell or mortgage his lands.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 490.]

5. Infants (§ 39*)—Powers of Equity to Mortgage Lands for Preservation Must Be Exercised According to Statute.—If courts of equity have inherent jurisdiction to authorize mortgage of an infant's lands for preservation or repairs, the manner of its exercise is regulated and controlled by Code 1904, § 2609 (Code 1919, § 5326), prescribing the same method of obtaining an order for such preservation as is established by § 2616.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 487 et seq.]

6. Infants (§ 39*)—Mortgage of Lands Pursuant to Defective Proceedings and Sale Thereunder Void.—Where a widow attempted to proceed under Code 1904, § 2616, in suit to sell or mortgage her infant son's lands to secure funds for their preservation and repair, but the proceedings were substantially defective in that necessary parties were lacking, etc., the mortgage made pursuant thereto and sale thereunder were void as against the infant.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 488 et seq.]

7. Equity (§ 239*)—Demurrer Admits Allegations of Bill.—The allegations of a bill demurred to must be accepted as true.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 471.]

8. Infants (§ 39*)—Presence of Necessary Parties to Suit to Mortgage Lands Jurisdictional.—The presence of the necessary parties to suit to sell or mortgage an infant's lands, required by Code 1904, § 2616, is jurisdictional, and decree rendered in their absence is void as to the infant whose interests are affected.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 488.]

9. Equity (§ 66*)—Infant, Attacking Deed of Trust on Lands and Sale Thereunder, Must Do Equity.—Where the situation is such that equity can be done between the parties, the infancy of complainant, seeking to have set aside deed of trust covering his lands and authorized by the court without jurisdiction to secure funds for repairs on the property, and to set aside sale thereunder, does not exclude him from the operation of the maxim that he who asks equity must do equity.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 487 et seq.]

Appeal from Circuit Court of City of Norfolk.

Suit for partition by Henry Parker, an infant, who sues by T. B. Penn, his next friend, against Percy S. Stephenson.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

From a decree sustaining demurrer to the bill, complainant appeals. Reversed, and cause remanded, with direction to overrule demurrer and to permit defendant to answer, etc.

Jas. G. Martin, of Norfolk, for appellant.

P. S. Stephenson and *Williams & Tunstall,* all of Norfolk, for appellee.

WHITAKER & FOWLE *v.* LANE et al.

Sept. 16, 1920.

[104 S. E. 252.]

1. Courts (§ 89*)—Established Rule for Which Reason Has Ceased Need Not Be Followed.—While great consideration should be given to precedents of long duration and general acceptance, a rule, established merely by precedent, is not infallible, and if it is highly technical, so that courts have had to make exceptions thereto from time to time, and the reason therefore has ceased, it need be no longer followed.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 720 et seq.]

2. Evidence (§ 444 (4)*)—Delivery of Sealed Instrument to Grantee on Binding Oral Condition May Be Shown.—Since the attaching of a seal is no longer attended with the formality it once was and has not the legal effect it formerly had as the binding obligation itself, the reason for the rule that a sealed instrument cannot be delivered to the grantee or obligee on an oral condition precedent to its effectiveness has ceased, so that it may be shown that a sealed contract for the purchase of land was delivered to the vendor to become effective only on the happening of a specified condition.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 521.]

3. Evidence (§ 417 (17)*)—Oral Evidence Admissible to Show Delivery of Sealed or Unsealed Instruments.—Delivery is as essential to give effect to a sealed instrument as it is to give effect to an unsealed instrument, and parol evidence has always been admitted to show that an instrument, either sealed or unsealed, was not in fact delivered, though possession was given to grantee.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 521.]

4. Evidence (§ 444 (2)*)—Between Parties Parol Evidence Admissible to Prove Facts Not Contradicting Instrument.—While in a controversy between the immediate parties of a written instrument, parol evidence is not admissible to vary, alter, or contradict the terms of

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.